RESPONSE REQUESTED

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No. 94-5707

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

SHARLENE WILSON — PETITIONER

V.

STATE OF ARKANSAS — RESPONDENT

ON WRIT TO CERTIORARI
TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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15 pp

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Respondent responds to petitioner's petition for writ of certiorari to the Supreme Court of Arkansas.

JURISDICTION

Respondent acknowledges that this Court has discretionary jurisdiction to review this case pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The petitioner's statement of the case is sufficient to apprise the Court of the facts of this case relating to the question presented for review.

REASONS FOR DENYING THE WRIT

I.

CERTIORARI SHOULD BE DENIED AS THE "KNOCK AND ANNOUNCE" RULE IS NOT EMBODIED WITHIN THE FOURTH AMENDMENT.

The petitioner argues that this Court should nationalize the "knock and announce" rule by reading it into the Fourth Amendment. Petitioner claims that such a rule is necessary to resolve a conflict among the states.

The State of Arkansas, as respondent, submits that there is no conflict between the states as petitioner alleges. Some states have made the "knock and announce" rule a part of the body of law regulating police procedure. What petitioner describes as a "conflict" among the states is no more than each state, through its courts and legislatures, adopting procedures, some strict and some less strict, all coming within the ambit of the Fourth Amendment.

Arkansas Rules of Criminal Procedure 13.3 provides for the manner in which a search warrant is to be executed; however, it is silent with regard to the "knock and announce" rule.[1]

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[1]A.R.Cr.P. 13.3 provides:

(a) A search warrant may be executed by any officer. The officer charged with its execution may be accompanied by such other officers or persons as may be reasonably necessary for the successful execution of the warrant with all practicable safety.

(b) In the course of any search or seizure pursuant to the warrant, the executing officer shall give a copy of the warrant to the person to be searched or the person in apparent control of the premises to be searched. The copy shall be furnished before undertaking the search or seizure unless the officer has reasonable cause to believe that such action would endanger the successful execution of the warrant with all practicable safety, in which case he shall, as soon as is practicable, state his authority and purpose and furnish a copy of the warrant. If the premises are unoccupied by anyone in apparent and responsible control, the officer shall leave a copy of the warrant suitably affixed to the premises.

(c) The scope of search shall be only such as is authorized by the warrant and is reasonably necessary to discover the persons or things specified therein. Upon discovery of the persons or things so specified, the officer shall take possession or custody of them and search no further under authority of the warrant. If in the course of such search, the officer discovers things not specified in the warrant which he reasonably believes to be subject to seizure, he may also take possession of the things so discovered.

(d) Upon completion of the search, the officer shall make and deliver a receipt fairly describing the things seized to the person from whose possession they are taken or the person in apparent control of the premises from which they are taken. If practicable, the list shall be prepared in the presence of the person to whom the receipt is to be delivered. If the premises are unoccupied by anyone in apparent and responsible control, the executing officer shall leave the receipt suitably affixed to the premises.

(e) The executing officer, and other officers accompanying and assisting him, may use such degree of force, short of deadly force, against persons, or to effect an entry or to open containers as is reasonably necessary for the successful execution of the search warrant for all practicable safety. The use of deadly force in the execution of a search warrant, other than in self-defense or

Petitioner further argues this Court is required to determine whether the "knock and announce" rule is embodied within the Fourth Amendment since there are "hundreds of millions of firearms in American homes and the propensity and regular need for narcotics officers to raid houses in plainclothes without announcing." (Petition at page 12) The respondent submits that just such a condition argues in favor of its position where the high incidence of firearms near at hand to those engaged in the trafficking of illegal drugs makes the element of surprise imperative, enabling police officers to gain control of a potentially life threatening situation and preventing the destruction of evidence. While a majority of states may require notice, one of the "notice" states has specifically exempted the requirement from cases where drugs are the focus of the search. Miss. Code Ann. § 41-29-157(c).

The petitioner cites the concurring opinion of Justice Brennan of Ker v. California, 374 U.S. 23 (1963) in favor of

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> defense of others, is justifiable only if the executing officer reasonably believes that there is a substantial risk that the persons or things to be seized will suffer, cause, or be used to cause death or serious bodily harm if their seizure is delayed, and that the force employed creates no unnecessary risk of injury to other persons.

See also Dodson v. State, 4 Ark. App. 1, 626 S.W.2d 624 (1982)(Glaze, J., concurring), cert. denied, 457 U.S. 1136 (1982).

her argument that the "knock and announce" rule is embodied in the Fourth Amendment. The majority opinion in Ker stated as follows:

> The States are not thereby precluded from developing workable rules governing arrest, searches and seizures to meet 'the practical demands of effective criminal investigation and law enforcement' in the states, provided that those rules do not violate the constitutional proscription of unreasonable searches and seizures and the concomitant command that evidence so seized is inadmissible against one who has standing to complain . . .

374 U.S. 23 at 34.

Petitioner goes on to cite Miller v. United States, 357 U.S. 301 (1958) and Sabbath v. United States, 391 U.S. 585 (1968) in support of her position. All three cases involved police officers guided by the federal rule, 18 U.S.C. § 3109. What is notable in the instant case, unlike those cited by the petitioner, is that the police officers here were armed with a valid search warrant. The Fourth Amendment requires that a neutral magistrate review the factual justification for the search. The Fourth Amendment does not give suspects warning to either dispose of evidence or arm themselves against the police.

Police procedure has long been held to be worked out by the different states with this Court providing a broad outline as to the requirements of the Constitution. What the

petitioner regards as conflict is, in reality, flexibility.

This Court should deny certiorari as no conflict exists.

CONCLUSION

The Rules of the Supreme Court state that review on writ of certiorari will only be granted when there are special and important reasons therefor. This case contains no issue worthy of such review. The point raised by the petitioner does not demonstrate that constitutional error has occurred. Therefore, for the reasons and authorities cited above, respondent respectfully prays that this Court deny review on writ of certiorari.

Respectfully submitted,

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October 17, 1993

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Mr. William K. Suter
Clerk of the Court
United States Supreme Court
No. 1 First Street, N.E.
Washington, D.C. 20543

RE: Sharlene Wilson v. State of Arkansas
October Term 1994, No. 94-5707

Dear Mr. Suter:

Please find enclosed for filing the original and eleven (11) copies of the respondent's brief in opposition to petition for writ of certiorari in the above-styled case. Opposing counsel has been served as indicated on the enclosed certificate of service.

Sincerely,

CLINT MILLER
Acting Deputy Attorney General
(501) 682-3657

CM:jt
Enclosure

200 Tower Building, 323 Center Street ● Little Rock, Arkansas 72201-2610

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CERTIFICATE OF SERVICE

I, Clint Miller, a member of the Bar of the Supreme Court of the United States and counsel of record for respondent herein, hereby certify that on October 17, 1994, pursuant to the Rules of the Supreme Court, I served one copy of the attached Brief for Respondent in Opposition to Petition for Writ of Certiorari on the petitioner herein as follows:

By mailing one copy in a duly addressed envelope, with first class postage prepaid to:

JOHN WESLEY HALL, JR.
(Craig Lambert)
523 West Third St.
Little Rock, AR 72201

All parties required to be served have been served.

DATED: October 17, 1994

Respectfully submitted,

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